

1990

## c 2 Insurance Statute Law Amendment Act, 1990

Ontario

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### Bibliographic Citation

*Insurance Statute Law Amendment Act, 1990*, SO 1990, c 2

### Repository Citation

Ontario (1990) "c 2 Insurance Statute Law Amendment Act, 1990," *Ontario: Annual Statutes*: Vol. 1990, Article 4.

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## CHAPTER 2

### **An Act to amend certain Acts respecting Insurance**

*Assented to May 28th, 1990*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Section 1 of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 67, section 1, is further amended by adding thereto the following paragraph:**

2a. “accountant” means a person who is licensed under the *Public Accountancy Act*.

R.S.O. 1980,  
c. 405

**(2) Paragraph 7 of section 1 of the said Act is repealed.**

**(3) Section 1 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 1, is further amended by renumbering paragraph 13a as paragraph 13d and by adding thereto the following paragraphs:**

13a. “class of risk exposure”, in relation to automobile insurance, includes all rules, procedures and factors used to determine the rates for each coverage and category of automobile insurance;

13b. “Commission” means the Ontario Insurance Commission;

13c. “Commissioner” means the commissioner of insurance appointed under section 3;

. . . . .

15a. “Director” means the director of arbitrations appointed under section 6;

. . . . .

56a. "rate", in relation to automobile insurance, means all amounts payable under contracts of automobile insurance for an identified risk exposure whether expressed in dollar terms or in some other manner and includes commissions, surcharges, fees, discounts, rebates and dividends.

**(4) Paragraph 39 of section 1 of the said Act is repealed and the following substituted therefor:**

39. "Minister" means the Minister of Financial Institutions.

**(5) Paragraph 62 of section 1 of the said Act is repealed and the following substituted therefor:**

62. "Superintendent" means the superintendent of insurance appointed under section 4.

**2. The heading to Part I of the said Act is repealed and the following substituted therefor:**

## PART I

### ONTARIO INSURANCE COMMISSION

#### ORGANIZATION

**3. Sections 2, 3, 4, 5 and 6 of the said Act are repealed and the following substituted therefor:**

Commission  
established

**2.—(1)** A commission to be known as the Ontario Insurance Commission is established.

Composition  
of  
Commission

**(2)** The Commission shall be composed of the Commissioner, the Superintendent and the Director.

Duties

**(3)** It is the duty of the Commission to administer and enforce this Act and to supervise generally, and make recommendations to the Minister in respect of, the business of insurance in Ontario.

Powers

**(4)** The Commission may exercise such powers as are necessary to carry out its functions under this Act.

Commis-  
sioner

**3.—(1)** The Lieutenant Governor in Council shall appoint a commissioner of insurance who shall carry out the duties and exercise the powers of the Commissioner under this Act and every other Act that assigns duties to or confers powers on the Commissioner.

(2) The Commissioner is the chief executive officer of the Commission. Idem

(3) If the Commissioner is absent or if there is a vacancy in the office of the Commissioner, such person as may be designated by the Commissioner shall act as and have all the powers of the Commissioner. Acting  
Commis-  
sioner

(4) The Commissioner may delegate in writing any of his or her powers or duties to an employee of the Commission, subject to any limitation or condition set out in the delegation. Delegation

(5) The Commissioner may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Commissioner relating to such hearings. Idem

**4.—**(1) The Lieutenant Governor in Council shall appoint a superintendent of insurance who shall carry out the duties and exercise the powers of the Superintendent under this Act and every other Act that assigns duties to or confers powers on the Superintendent. Superin-  
tendent

(2) The Superintendent is the chief administrative officer of the Commission and shall carry out such duties respecting the administration and enforcement of this Act as may be assigned by the Commissioner. Idem

(3) If the Superintendent is absent or if there is a vacancy in the office of the Superintendent, such person as may be designated by the Superintendent shall act as and have all the powers of the Superintendent. Acting  
Superin-  
tendent

(4) The Superintendent may delegate in writing any of his or her powers or duties, including duties assigned to the Superintendent by the Commissioner, to an employee of the Commission, subject to any limitation or condition set out in the delegation. Delegation

(5) The Superintendent may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Superintendent relating to such hearings. Idem

**5.—**(1) Such employees as are required for the purposes of the Commission may be appointed under the *Public Service Act*. Staff  
R.S.O. 1980,  
c. 418

(2) The Commission may engage persons, other than those appointed under subsection (1), to provide professional, tech- Professional  
assistance

nical or other assistance to the Commission and may establish the duties and terms of engagement and provide for the payment of the remuneration and expenses of such persons.

Director of  
arbitrations

**6.**—(1) The Lieutenant Governor in Council shall appoint a director of arbitrations who shall carry out the duties and exercise the powers of the Director under this Act.

Acting  
Director

(2) If the Director is absent or if there is a vacancy in the office of Director, such person as may be designated by the Director shall act as and have all the powers of the Director.

Delegation

(3) The Director may delegate in writing any of his or her powers or duties to an employee of the Commission, subject to any limitation or condition set out in the delegation.

Idem

(4) The Director may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Director relating to such hearings.

Accident  
benefits  
advisory  
committee

**6a.** The Minister shall appoint an accident benefits advisory committee to make recommendations concerning persons qualified to be arbitrators, to advise the Commission concerning procedures to be used during arbitrations and to advise on such other matters as the Commission or the Minister may refer to the committee.

Arbitrators

**6b.**—(1) The Commissioner shall establish and maintain a roster of candidates chosen by him or her from the persons recommended by the accident benefits advisory committee to conduct arbitrations under this Act.

Appointment

(2) The Director shall appoint arbitrators only from the roster of candidates.

Mediators

**6c.** The Commissioner may appoint employees of the Commission or other persons to act as mediators.

Medical, etc.,  
advisory  
panel

**6d.**—(1) The Commissioner shall appoint a medical and rehabilitation advisory panel to assist and advise the Director and arbitrators under this Act.

Appointment

(2) The panel shall consist of medical practitioners who are qualified to conduct medical assessments and other persons who are qualified to conduct rehabilitation assessments.

Chair

(3) The Commissioner shall designate a member of the panel to be its chair.

**6e.**—(1) No action or other proceeding for damages shall be instituted against any person acting under the authority of this Act or any Act listed in the Schedule to this subsection for any act done in good faith in the performance or intended performance of the person's duty or in the exercise or intended exercise of the person's powers or for any alleged neglect or default in the performance or execution in good faith of the person's duties or powers. Immunity

#### SCHEDULE TO SUBSECTION (1)

- |  |                        |
|--|------------------------|
| 1. <i>Compulsory Automobile Insurance Act.</i>       | R.S.O. 1980,<br>c. 83  |
| 2. <i>Motor Vehicle Accident Claims Act.</i>         | R.S.O. 1980,<br>c. 298 |
| 3. <i>Prepaid Hospital and Medical Services Act.</i> | R.S.O. 1980,<br>c. 388 |
| 4. <i>Registered Insurance Brokers Act.</i>          | R.S.O. 1980,<br>c. 444 |

(2) Notwithstanding subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject. Crown  
liability  
R.S.O. 1980,  
c. 393

(3) Except with the consent of the Commissioner, no person mentioned in subsection (1), other than the Commissioner, shall be required to testify in a civil proceeding, in a proceeding before the Commissioner or in a proceeding before any other tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1). Testimony in  
civil  
proceedings

(4) Except with the consent of the Minister, the Commissioner shall not be required to testify in a civil proceeding or in a proceeding before any tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1). Idem

**6f.** The Commissioner, the Superintendent, the Director and the employees of the Commission shall not be interested, directly or indirectly, other than as a policyholder, in any insurer, agent, adjuster or broker doing business in Ontario. Independence  
of Commis-  
sioner and  
others

**6g.**—(1) The Commissioner shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Commission. Annual  
report

Further  
reports

(2) The Commissioner shall make such further reports and provide the Minister with such information as the Minister from time to time requires.

Tabling of  
reports

(3) The Minister shall submit the reports to the Lieutenant Governor in Council and lay them before the Legislative Assembly if it is in session or, if not, at the next session.

Assessment  
of insurers

**6h.**—(1) The Lieutenant Governor in Council may assess all insurers with respect to all expenses incurred and expenditures made by the Commission in the conduct of its affairs and an insurer shall pay the amount assessed against it.

Idem

(2) If an assessment is made under subsection (1), the share of a particular insurer shall be determined in the manner prescribed by regulation.

Idem

(3) The regulations made in respect of an assessment made under subsection (1) in respect of expenses and expenditures for dispute resolution under sections 242b to 242f may provide that the assessment may be based on such degree of usage of the dispute resolution system as may be provided in the regulations.

#### DECISIONS, HEARINGS AND APPEALS

Orders

**6i.**—(1) The Commissioner shall determine matters before him or her by order and may make an order subject to such conditions as are set out in the order.

Interim  
orders

(2) The Commissioner may make interim orders pending the final order in a matter before him or her.

Proceedings  
before the  
Commissioner

**6j.**—(1) For a proceeding before the Commissioner, the Commissioner may,

- (a) make rules for the practice and procedure to be observed;
- (b) determine what constitutes adequate public notice;
- (c) before or during the proceeding, conduct any inquiry or inspection the Commissioner considers necessary;
- (d) in determining any matter, consider any relevant information obtained by the Commission in addition to evidence given at the proceeding, if he or she first informs the parties to the proceedings of the

additional information and gives them an opportunity to explain or refute it.

(2) The costs of and incidental to a proceeding before the Commissioner are in his or her discretion and may be fixed in any case at a sum certain or may be assessed. Costs

(3) In awarding costs, the Commissioner is not limited to the considerations that govern the award of costs in any court. Idem

(4) The Commissioner may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed. Idem

(5) The Commissioner may establish a scale under which such costs shall be assessed. Idem

(6) Costs awarded under this section may include the costs of the Commission, regard being had to the time and expenses of the Commission. Idem

**6k.**—(1) The Commissioner or the Superintendent, as the case may be, may reconsider and vary or revoke a decision or order made by him or her if he or she considers it advisable to do so. Variation of decisions

(2) The Commissioner or the Superintendent, as the case may be, is not required to hold a hearing when reconsidering his or her decision, but he or she shall allow the parties to make written submissions. No hearing

**6-l.**—(1) A person affected by a decision of the Superintendent may appeal the decision to the Commissioner. Appeal from Superintendent's decision

(2) A request for an appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the Superintendent's decision. Request for appeal

(3) The Commissioner shall hold a hearing of an appeal. Hearing

(4) The parties to an appeal are the person who requests the appeal, the Superintendent and such other persons as the Commissioner may specify. Parties

(5) Upon hearing an appeal, the Commissioner may confirm, vary or rescind the decision appealed from or substitute his or her decision for that of the Superintendent. Power of the Commissioner

**6m.**—(1) The Lieutenant Governor in Council may require the Commissioner to examine and report on any ques- Reference hearings



tion related to insurance that, in the opinion of the Lieutenant Governor in Council, requires a public hearing.

Parties

(2) The Commissioner shall determine who may be a party to a reference hearing.

Exclusive jurisdiction

**6n.**—(1) This section applies with respect to proceedings under this Act before the Commissioner, the Superintendent and the Director and before an arbitrator.

Idem

(2) A person referred to in subsection (1) has exclusive jurisdiction to exercise the powers conferred upon him or her under this Act and to determine all questions of fact or law that arise in any proceeding before him or her and, unless an appeal is provided under this Act, his or her decision thereon is final and conclusive for all purposes.

Decisions, etc., not stayed

(3) An application for judicial review and any appeal from an order of the court on the application does not stay the decision made under this Act.

Court may grant stay

(4) Notwithstanding subsection (3), a judge of the court to which the application is made or a subsequent appeal is taken may grant a stay until the disposition of the judicial review or appeal.

Arbitration proceedings

**6o.** Subject to the procedures and time limits for the conduct of arbitrations set out in the regulations, the Director may make rules for the practice and procedure to be observed for a proceeding before him or her or before an arbitrator.

Power to summon witnesses, etc.

**6p.**—(1) For the purpose of exercising the powers and performing their duties under this or any other Act, the Commissioner, the Superintendent, the Director and every arbitrator has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions.

Power to require evidence

(2) A person referred to in subsection (1) may require to be made or may take and receive affidavits or depositions and may examine witnesses upon oath.

Employment of stenographer

(3) The evidence and proceedings in any matter before a person referred to in subsection (1) may be reported by a stenographer who has taken an oath before the person to report the evidence and proceedings faithfully.

Oaths

(4) A person referred to in subsection (1) may administer and certify an oath required under this Act.

**4. The said Act is amended by inserting before section 7 the following heading:**

ADMINISTRATION

**5. The said Act is further amended by adding thereto the following section:**

**7a.** Records required under this Act to be prepared and maintained by the Commissioner or the Superintendent may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time. Records

**6. Subsections 8 (2) and (3) of the said Act are repealed and the following substituted therefor:**

- (2) The Commission may issue a certificate, Certificates
- (a) stating that on a stated day a person was or was not licensed under this Act, or that the licence was renewed, suspended, revived, revoked or cancelled on a stated day;
  - (b) stating that a copy of, or extract from, a document or thing in the custody of the Commission is a true copy of, or extract from, the original;
  - (c) stating the amount payable to the Treasurer of Ontario under subsection 14 (3) or (4);
  - (d) stating the amount payable for an audit under subsection 80 (4);
  - (e) stating whether a document was served or delivered under this Act;
  - (f) stating whether any document required under this Act was filed;
  - (g) stating whether a document or notification was received or issued by the Commissioner, the Superintendent, the Director, an arbitrator or a mediator under this Act;
  - (h) giving particulars of the custody of any book, record, document or thing;

- (i) stating when the facts upon which a proceeding for an offence are based first came to the knowledge of the Commissioner or the Superintendent.

Idem

(3) The Commissioner or the Superintendent may sign certificates on behalf of the Commission.

**7. The said Act is further amended by adding thereto the following section:**

Official documents as evidence

**8a.—**(1) In this section, “official document” means a certificate, licence, order, decision, direction, inquiry or notice under this Act.

Idem

(2) An official document that purports to be signed on behalf of the Commission shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or the position of the person appearing to have signed the official document.

True copies as evidence

(3) A true copy certified by the Commission under clause 8 (2) (b) is admissible in evidence to the same extent as and has the same evidentiary value as the document or thing of which it is a copy.

**8. Section 9 of the said Act is repealed and the following substituted therefor:**

Right to a licence

**9.** It is the duty of the Superintendent to determine the right of an insurer in Ontario to be licensed under this Act but nothing in this section affects the right of the Lieutenant Governor in Council or the Commissioner to suspend or cancel any licence in the exercise of his or her authority under this Act.

**9. Subsection 10 (3) of the said Act is repealed.**

**10. Sections 11, 12, 13, 14 and 15 of the said Act are repealed and the following substituted therefor:**

Inquiries

**11.** The Superintendent or a person designated by the Commissioner may direct to an insurer any inquiry related to the contracts, financial affairs or the acts and practices of the insurer, and the insurer shall answer promptly, explicitly and completely.

Right of access

**12.** The Superintendent or a person designated by the Commissioner may at any reasonable time examine the books,

securities, documents and things related to the business of an insurer, agent, adjuster or broker.

**13.—**(1) Persons who are licensed under this Act, officers and agents of an insurer and the chief agent of an insurer that has its head office outside Ontario shall, on request, furnish the Superintendent or a person designated by the Commissioner with full information, Duty to furnish information

- (a) relating to any contract of insurance issued by an insurer;
- (b) relating to any settlement or adjustment under a contract of insurance; or
- (c) respecting any activities related to the business of insurance.

(2) An insured person shall, on request, furnish the Superintendent or person designated by the Commissioner with full information relating to any contract of insurance issued to the insured person or to any settlement or adjustment affecting the insured person under a contract of insurance. Idem

**14.—**(1) Once each year or more frequently as the Superintendent may consider appropriate for all insurers or for a particular insurer, the Superintendent or a person appointed by the Superintendent, Examination of insurers

- (a) shall examine an insurer's statement made under section 81;
- (b) may make such inquiries as are necessary to ascertain the insurer's condition and ability to meet its obligations as and when they become due; and
- (c) may make such inquiries as are necessary to ascertain whether the insurer has complied with the requirements of this Act applicable to its transactions.

(2) Subsection (1) does not apply so as to require an examination of an insurer, Exception

- (a) that is a mutual benefit society with fewer than 300 members; or
- (b) in respect of which the Superintendent adopts an examination by another government.

Preparation  
of abstracts,  
valuation

(3) The Superintendent may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets and liabilities of an insurer and the insurer shall pay the Treasurer of Ontario for the cost of the preparation of the abstracts or the valuation upon receiving a certificate of the Commission stating the amount payable.

Expenses of  
examination

(4) Where the office of an insurer at which an examination is made under this section is outside Ontario, the insurer shall pay the Treasurer of Ontario for the cost of the examination upon receiving a certificate of the Commission stating the amount payable.

Service of  
documents

**15.**—(1) Service of any document for any purpose of this Act, where the method is not otherwise specified, may be made,

- (a) on any person, by personal service on the person to be served;
- (b) on an insurer, by first class registered mail addressed to the insurer or its chief executive officer at the insurer's head office in Ontario as identified in the records of the Superintendent;
- (c) on a person who is not an insurer, by first class registered mail addressed to the person's last known address;
- (d) on any person, by leaving a copy of the document with the solicitor, if any, of the person to be served, or with an employee in the solicitor's office; or
- (e) on any person, by telephone transmission of a facsimile of the document in accordance with subsection (7).

Service at  
place of  
residence

(2) Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

- (a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and
- (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

(3) Service at a person's place of residence under subsection (2) is effective on the fifth day after the document is mailed.

Effective date of service

(4) Service by first class registered mail is not effective unless a post office receipt for the mail bearing a signature that purports to be the signature of the person to be served or of an officer of an insurer is received by the sender.

Requirements for service by mail

(5) Service by first class registered mail is effective on the date on which the sender of the mail receives the receipt described in subsection (4).

Effective date of service by mail

(6) Service on a solicitor is not effective unless the solicitor endorses on the document or a copy of it an acceptance of service on behalf of his or her client and the date of the acceptance.

Acceptance of service by a solicitor

(7) A document that is served by telephone transmission shall include a cover page indicating,

Requirements for service by facsimile

- (a) the sender's name, address and telephone number;
- (b) the name of the person to be served;
- (c) the date and time of transmission;
- (d) the total number of pages transmitted, including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telephone number of a person to contact in the event of transmission problems.

**15a.**—(1) Where an attempt is made to effect service under subsection 15 (1) on an insurer or an agent, and for any reason service cannot be effected, the document may be served on the Superintendent and such service shall be deemed to be service on the insurer or agent.

Deemed service

(2) Service may be made on the Superintendent under subsection (1) by first class registered mail addressed to the Superintendent at the Superintendent's office, or by personal service on the Superintendent.

Method of service

(3) Where a document is served on the Superintendent under subsection (1), the Superintendent shall forthwith mail the document to the insurer or agent at the address for the

Superintendent to forward document

insurer or agent contained in the records of the Superintendent.

**11. Section 18 of the said Act is repealed and the following substituted therefor:**

Publication  
by  
Commission

**18.** The Commission may publish any information that the Commissioner, the Superintendent or the Director considers to be in the public interest.

**12.—(1) Subsections 21 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:**

Necessity for  
licence

(1) Every insurer undertaking insurance in Ontario or carrying on business in Ontario shall obtain from the Commissioner and hold a licence under this Act.

Prohibition  
re: licence

(2) No person shall carry on business as an insurer or engage in an act constituting the business of insurance in Ontario without a licence under this Act.

Idem

(2a) No insurer shall carry on business in Ontario as an insurer of a class of insurance that is not authorized by its licence under this Act.

Prohibition  
against acting  
on behalf of  
unlicensed  
insurer

(3) No person in Ontario shall do or cause to be done any act or thing mentioned in subsection 20 (3) on behalf of or as agent of an insurer that is not licensed under this Act.

**(2) Subsection 21 (5) of the said Act is repealed and the following substituted therefor:**

Unauthorized  
insurance

(5) No insurer that is incorporated in Ontario and licensed under this Act shall carry on or solicit business as an insurer in another jurisdiction unless it is authorized to do so under the laws of that jurisdiction.

**13. Subsection 23 (1) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.**

**14. Subsection 24 (4) of the said Act is repealed and the following substituted therefor:**

Conditions

(4) A licence may be issued subject to such limitations and conditions as may be prescribed by regulation.

**15. Paragraph 1 of subsection 25 (1) of the said Act is amended by striking out “benefits set forth in Schedule C” in**

the last line and inserting in lieu thereof "no-fault benefits required by subsection 232 (1)".

**16.—**(1) Subsection 28 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out "Minister" in the seventh line and inserting in lieu thereof "Commissioner".

(2) Subsection 28 (1a) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out "Minister" in the last line and inserting in lieu thereof "Commissioner".

(3) Subsection 28 (1b) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out "Minister" in the last line and inserting in lieu thereof "Commissioner".

**17.** Subsection 32 (3) of the said Act is amended by striking out "Minister" in the first line and inserting in lieu thereof "Commissioner".

**18.** Subsection 33 (2) of the said Act is amended by striking out "Minister" in the first line and inserting in lieu thereof "Commissioner".

**19.—**(1) Subsection 35 (1) of the said Act is amended by striking out "Minister" in the third line and inserting in lieu thereof "Commissioner".

(2) Subsection 35 (3) of the said Act is amended by striking out "Minister" in the second line and inserting in lieu thereof "Commissioner".

(3) Subsection 35 (4) of the said Act is amended by striking out "Minister" in the first line and in the tenth line and inserting in lieu thereof in each instance "Commissioner".

**20.** Subsection 36 (1) of the said Act is amended by striking out "Minister" in the sixth line and inserting in lieu thereof "Commissioner".

**21.** Section 37 of the said Act is amended by striking out "Minister" in the second line and inserting in lieu thereof "Commissioner".

**22.—**(1) Subsection 38 (1) of the said Act is amended by striking out "Minister" in the last line and inserting in lieu thereof "Commissioner".



(2) Subsection 38 (2) of the said Act is amended by striking out "Minister" in the first line and inserting in lieu thereof "Commissioner".

(3) Subsection 38 (3) of the said Act is amended by striking out "Minister" in the third line and inserting in lieu thereof "Commissioner".

(4) Subsection 38 (4) of the said Act is amended by striking out "Minister" in the second line and inserting in lieu thereof "Commissioner".

**23.** Subsection 39 (1) of the said Act is amended by striking out "Minister" in the tenth line and in the eleventh line and inserting in lieu thereof in each instance "Commissioner".

**24.—**(1) Subsection 40 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 6, is amended by striking out "Minister" in the last line and inserting in lieu thereof "Commissioner".

(2) Subsection 40 (2) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 6, is further amended by striking out "Minister" in the first line and in the sixth line and inserting in lieu thereof in each instance "Commissioner".

(3) Subsection 40 (3) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 6, is further amended by striking out "Minister" in the third and fourth lines and in the fourth line and inserting in lieu thereof in each instance "Commissioner".

(4) Subsection 40 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 6, is amended by striking out "Minister" in the first line and in the second line and inserting in lieu thereof in each instance "Commissioner".

**25.—**(1) Subsection 41 (2) of the said Act is amended by striking out "Minister" in the second line and inserting in lieu thereof "Commissioner".

(2) Clause 41 (3) (b) of the said Act is amended by striking out "Minister" in the last line and inserting in lieu thereof "Commissioner".

(3) Subsection 41 (4) of the said Act is amended by striking out "Minister" in the first line and in the sixth line and inserting in lieu thereof in each instance "Commissioner".

(4) Subsection 41 (5) of the said Act is amended by striking out "Minister" in the first line and inserting in lieu thereof "Commissioner".

**26.—**(1) Subsection 42 (3) of the said Act is amended by striking out "Minister" in the first line, in the fourth line and in the eighth line and inserting in lieu thereof in each instance "Commissioner".

(2) Subsection 42 (4) of the said Act is amended by striking out "Minister" in the first line and inserting in lieu thereof "Commissioner".

(3) Subsection 42 (6) of the said Act is amended by striking out "Minister" in the second line and inserting in lieu thereof "Commissioner".

**27.** Section 43 of the said Act is amended by striking out "Minister" in the last line and inserting in lieu thereof "Commissioner".

**28.** Section 44 of the said Act is amended by striking out "Minister" in the second line and in the third line and inserting in lieu thereof in each instance "Commissioner".

**29.** Section 79 of the said Act is amended by striking out "Superintendent" in the fourth line and inserting in lieu thereof "Commissioner".

**30.—**(1) Subsection 80 (1) of the said Act is repealed and the following substituted therefor:

(1) When required by the Commissioner, licensed insurers shall prepare and file with the Commission or with an agency designated by the Commissioner a return respecting the experience of the insurer's business in a form approved by the Commissioner containing such information as the Commissioner may require. Returns

(2) Subsections 80 (3), (4) and (5) of the said Act are repealed and the following substituted therefor:

(3) If it appears to the Commissioner that the insurer's records of premium income and claims paid are not kept in such a manner as to show correctly the experience of the insurer for the purposes of the return, the Commissioner may nominate an accountant to proceed under his or her direction to audit the books and records of the insurer and to give such instructions as will enable the officers of the insurer to keep the records correctly after the audit. Audit and direction

Expenses of  
audit

(4) The insurer shall pay the accountant for an audit under subsection (3) forthwith upon receiving a certificate of the Commission stating the amount payable.

Debt to the  
Crown

(5) Any amount payable to an accountant under subsection (3) that is not paid within thirty days from the date on which the insurer receives the Commission's certificate becomes a debt owing to the Crown.

**31.—(1) Subsection 81 (1) of the said Act is repealed and the following substituted therefor:**

Annual and  
interim  
statements

(1) Subject to sections 323 and 327, every licensed insurer shall,

- (a) prepare annually and deliver to the Superintendent, on or before the prescribed date for the prescribed category of insurer, a statement of the condition of affairs of the insurer for the year that ended on the 31st day of December next preceding the delivery of the statement; and
- (b) prepare and deliver to the Superintendent when required by the Superintendent, for the prescribed category of insurer, an interim statement for the period specified by the Superintendent containing such information as the Superintendent considers necessary to assess the insurer's condition of affairs.

Contents of  
annual  
statement

(1a) A statement of the condition of affairs of an insurer under clause (1) (a) shall be in a form approved by the Superintendent, and shall set out,

- (a) the assets, liabilities, revenues and expenses of the insurer for the year;
- (b) particulars of the business done by the insurer in Ontario during the year; and
- (c) such other information as the Superintendent considers necessary to assess an insurer's condition of affairs.

Auditor's  
report

(1b) A statement of the condition of affairs of an insurer under clause (1) (a) shall be accompanied by a report of an auditor prepared in the manner required by the Superintendent.

(2) Subsection 81 (2) of the said Act is amended by striking out "subsection (1)" in the fourth line and inserting in lieu thereof "clause (1) (a)".

(3) Subsections 81 (4), (5), (6), (7), (8) and (9) of the said Act are repealed and the following substituted therefor:

(4) The Superintendent is authorized to obtain from insurers personal information about identifiable individuals where the collection of the information is required to monitor the condition of affairs of the insurer and the information is collected on a statement made under subsection (1).

Indirect  
collection of  
personal  
information

**32.** The said Act is further amended by adding thereto the following sections:

**81a.** Notice of the requirements for returns under section 80 or 81 is sufficient if it is sent by first class ordinary mail addressed to the insurer at the insurer's address for service of notice or process as identified in the records of the Superintendent.

Notice of  
returns

**81b.** The financial statements required under this Act shall be prepared in accordance with this Act and the regulations.

Preparation  
of financial  
statements

**33.** Subsection 87 (7) of the said Act is amended by striking out "Minister" in the twentieth line and in the twenty-first line and inserting in lieu thereof in each instance "Commissioner".

**34.** Section 93 of the said Act is amended by striking out "Superintendent" in the second line and inserting in lieu thereof "Commission".

**35.** Subsection 94 (2) of the said Act is amended by striking out "Minister" in the first line and in the fifth line and inserting in lieu thereof in each instance "Commissioner".

**36.** Section 97 of the said Act and the heading "Penalties" preceding section 97 are repealed.

**37.—(1)** Clause 98 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) prescribing fees in relation to matters under this Act, including fees for licences and their renewal, for the filing of documents and, for any services provided by or through the Ministry of Financial Institutions or the Commission.

**(2) Clause 98 (1) (b) of the said Act is repealed and the following substituted therefor:**

- (b) establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;
- (ba) requiring insurers to offer optional benefits in excess of the benefits that must be provided under clause (b) and establishing terms, conditions, provisions, exclusions and limits related to such benefits;
- (bb) prescribing categories of insurers for the purpose of subsection 80 (1), requiring insurers to file a return under that subsection by category and prescribing the information that insurers may solicit from insured persons for purposes of such returns;
- (bc) prescribing categories of insurers for the purpose of subsection 81 (1);
- (bd) prescribing dates for the purpose of clause 81 (1) (a);
- (be) governing the preparation of financial statements required under this Act or the regulations;
- (bf) prescribing the information to be given to applicants or to insured persons under subsection 203b (1) and the circumstances in which it is to be given;
- (bg) establishing requirements that must be met before an insurer declines to issue, terminates or refuses to renew a contract of automobile insurance or refuses to provide or continue any coverage or endorsement in respect thereof;
- (bh) prescribing grounds for which an insurer cannot decline to issue, terminate or refuse to renew a contract of automobile insurance or refuse to provide or continue any coverage or endorsement in respect thereof;
- (bi) prescribing coverages and endorsements for the purposes of section 208b;
- (bj) governing the payment of premiums for automobile insurance in instalments, setting maximum rates of

interest in relation to instalment payments and exempting any insurer, class of insurers or class of policies from statutory condition 1c set out in section 207;

- (bk) exempting any insurer, and exempting any insurer in respect of certain types of contracts of automobile insurance, from section 208a;
- (bl) prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;
- (bm) providing for and governing indemnification and subrogation where section 230a applies;
- (bn) prescribing any activity or failure to act that constitutes an unfair or deceptive act or practice under subclause 393 (b) (xii) and prescribing requirements that, if not complied with, constitute an unfair or deceptive act or practice;
- (bo) prescribing classes of persons, classes of automobiles and terms, conditions, provisions, exclusions and limits for the purposes of subsection 239b (1);
- (bp) prescribing rules of procedure and setting time-limits in respect of mediation, arbitration, appeal and variation proceedings under sections 242b to 242f;
- (bq) prescribing expenses that may be awarded to insured persons under subsection 242d (11) and setting maximum amounts that may be awarded for such expenses;
- (br) permitting the Director to vary or revoke orders and prescribing rules of procedure and setting conditions and setting time-limits in respect thereof and permitting the Director to proceed by way of a hearing or by way of written submissions.

**(3) Subsection 98 (1) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 8 and 1987, chapter 8, section 3, is further amended by adding thereto the following clauses:**

- (fa) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance in respect of which sections 369 to 372b apply;
- (fb) prescribing classes of risk exposure to be used by insurers in determining the rates for each coverage and category of automobile insurance;
- (fc) prescribing classes of risk exposure which insurers are prohibited from using in determining the rates for each coverage and category of automobile insurance;
- (fd) prescribing, for the purpose of section 6h, the method of determining the share of an assessment that is payable by an insurer.

**38. Subsection 143 (3) of the said Act is amended by striking out “Minister” in the fourth line and inserting in lieu thereof “Commissioner”.**

**39. Section 201 of the said Act is repealed and the following substituted therefor:**

Definitions

**201.—(1) In this Part,**

“automobile”, includes a motor vehicle required under any Act to be insured under a motor vehicle liability policy;

“contract” means a contract of automobile insurance;

“excluded driver” means a person named as an excluded driver in an endorsement under section 217a;

“fault determination rules” means the rules prescribed under clause 98 (1) (b);

“insured” means a person insured by a contract whether named or not and includes every person who is entitled to no-fault benefits under the contract whether or not described therein as an insured person;

“no-fault benefits” means the benefits set out in the regulations made under clauses 98 (1) (b) and (ba);

“*No-Fault Benefits Schedule*” means the regulations made under clauses 98 (1) (b) and (ba);

“occupant”, in respect of an automobile, means,

- (a) the driver,
- (b) a passenger, whether being carried in or on the automobile,
- (c) a person getting into or on or getting out of or off the automobile;

“spouse” means either of a man and a woman who,

- (a) are married to each other,
- (b) have together in good faith entered into a marriage, or
- (c) are not married to each other and have cohabited continuously for a period of not less than three years, or have cohabited in a relationship of some permanence if they are the natural or adoptive parents of a child.

(2) A reference to Schedule C in any other Act or in any regulation, contract or other instrument shall be deemed to be a reference to the *No-Fault Benefits Schedule* and a reference to benefits under Schedule C shall be deemed to be a reference to no-fault benefits. Transition

(3) Every contract to which subsection 232 (1) applies shall be deemed to have been amended on the day this subsection comes into force to include no-fault benefits in accordance with the *No-Fault Benefits Schedule*. Idem

(4) The benefits of a person who, before the coming into force of this subsection, was entitled to benefits under Schedule C shall be determined in accordance with this Act as it read immediately before the repeal of Schedule C. Idem

(5) For the purposes of subsections (2) and (4), “Schedule C” means Schedule C to this Act as this Act read before the coming into force of this subsection. Idem

(6) An insurer, with the approval of the Commissioner, may offer optional benefits in excess of the benefits that must be provided under the *No-Fault Benefits Schedule*. Additional benefits

(7) Optional benefits offered under subsection (6) shall be deemed to be no-fault benefits and the *No-Fault Benefits Schedule* applies to them with necessary modifications. Idem



**40.** The said Act is further amended by adding thereto the following section:

Exception re:  
insured

**201a.** Except as provided in the *No-Fault Benefits Schedule*, the insured under a contract shall be deemed not to include any person who sustains loss or damage while any automobile insured under the contract is being used or operated by an excluded driver.

**41.—(1)** Subsections 203 (1) and (2) of the said Act are repealed and the following substituted therefor:

Approval of  
forms

(1) No insurer shall use a form of policy, endorsement or renewal, a claims form or a continuation certificate in respect of automobile insurance other than a form approved by the Commissioner.

(2) Section 203 of the said Act is amended by striking out “Superintendent” wherever it occurs and inserting in lieu thereof in each instance “Commissioner”.

**42.** The said Act is further amended by adding thereto the following sections:

Application  
form

**203a.** Where so required by the regulations, no insurer shall use a form of application other than a prescribed form.

#### OTHER INFORMATION

Information  
for  
applicants,  
etc.

**203b.—(1)** An insurer shall supply at such times as may be prescribed such information as may be prescribed to applicants for automobile insurance and to named insureds under contracts.

Information  
deemed to  
be part of  
application

(2) Information supplied under subsection (1) by an insurer to an applicant for automobile insurance shall be deemed to be a part of the application.

Information  
from brokers

**203c.** A broker shall provide, on the request of an applicant for insurance, the names of all insurers with whom the broker has an agency contract relating to automobile insurance and all information obtained by the broker relating to quotations on automobile insurance for the applicant.

**43.—(1)** Subsection 205 (5) of the said Act is amended by striking out “Superintendent” in the third line and in the last line and inserting in lieu thereof in each instance “Commissioner”.

(2) Subsection 205 (7) of the said Act is amended by striking out "Superintendent" in the fourth and fifth lines and inserting in lieu thereof "Commissioner".

**44.** Section 206 of the said Act is amended by adding thereto the following subsection:

(1a) Subsection (1) does not invalidate such no-fault benefits as are set out in the *No-Fault Benefits Schedule*. No-fault  
benefits  
protected

**45.—(1)** Subsection 207 (1) of the said Act is amended by striking out "subsection 203 (2), section 208 and section 229" in the first and second lines and inserting in lieu thereof "sections 208 and 229".

(2) The statutory conditions set out in section 207 of the said Act are amended by adding thereto the following:

**No-Fault  
Benefits  
Protected**

1a. Despite a failure to comply with statutory condition 1 (1), a person is entitled to such no-fault benefits as are set out in the *No-Fault Benefits Schedule*.

**Refund of  
Premium  
Overpayment**

1b.—(1) Where the insured has been incorrectly classified with respect to a risk exposure under this contract under the risk classification scheme used by the insurer or that the insurer is required by law to use, the insurer shall make the necessary correction, and shall refund to the insured the amount of any premium overpayment together with interest thereon for the period that the incorrect classification was in effect at the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the incorrect classification was first made rounded to the next highest whole number if the bank rate includes a fraction.

**Definition**

(2) In this statutory condition, "bank rate" means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule I to the *Bank Act* (Canada).

**Monthly  
Payments**

1c. Unless otherwise provided by the regulations under the *Insurance Act*, the insured may pay the premium, without penalty, in equal monthly payments totalling the amount of the premium. The insurer may charge interest not exceeding the rate set out in the regulations.

(3) Statutory condition 2 set out in the said section 207 is struck out and the following substituted therefor:

**Authority to  
drive**

2.—(1) The insured shall not drive or operate or permit any other person to drive or operate the automobile unless the insured or other person is authorized by law to drive or operate it.

**Prohibited use** (2) The insured shall not use or permit the use of the automobile in a race or speed test or for any illicit or prohibited trade or transportation.

(4) Statutory condition 3 (1) (a) set out in the said section 207 is amended by striking out “promptly” in the first line and is further amended by striking out “accident” in the last line and inserting in lieu thereof “incident”.

(5) Statutory condition 4 (1) (a) set out in the said section 207 is amended by striking out “promptly” in the first line.

(6) Statutory condition 4 (8) set out in the said section 207 is repealed.

(7) The said statutory conditions are further amended by adding the following:

**Time limit** 4a. The notice required by statutory conditions 3 and 4 shall be given to the insurer within seven days of the incident but if the insured is unable because of incapacity to give the notice within seven days of the incident, the insured shall comply as soon as possible thereafter.

(8) Statutory condition 6 set out in the said section 207 is repealed and the following substituted therefor:

**Time and manner of payment of insurance money** 6.—(1) The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it.

**When action may be brought** (2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with.

**Limitation of actions** (3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile or its contents shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or other property shall be commenced within two years next after the cause of action arose and not afterwards.

(9) Statutory condition 7 set out in the said section 207 is amended by striking out “named in this contract” in the second and third lines.

46. Subsection 208 (1) of the said Act is amended by striking out “232 or 233” in the last line and inserting in lieu thereof “or 232”.

**47. The said Act is further amended by adding thereto the following sections:**

**208a.**—(1) If an insurer does not intend to renew a contract or if an insurer proposes to renew a contract on varied terms, the insurer shall, Notice of expiry or variation

- (a) give the named insured not less than thirty days notice in writing of the insurer's intention or proposal; or
- (b) give the broker, if any, through whom the contract was placed forty-five days notice in writing of the insurer's intention or proposal.

(2) Subject to subsection (4), a broker to whom an insurer has given notice under clause (1) (b) shall give the named insured under the contract not less than thirty days notice in writing of the insurer's intention or proposal. Idem

(3) Notices given under subsections (1) and (2) shall set out the reasons for the insurer's intention or proposal. Reasons

(4) Where, before a broker is required to have given notice to a named insured under subsection (2), the broker places with another insurer a replacement contract containing substantially similar terms as the expiring contract, the broker is exempted from giving notice under subsection (2). Exception

(5) A contract of insurance is in force until there is compliance with subsections (1), (2) and (3). Effect of failure to comply

(6) This section comes into force on a day to be named by proclamation of the Lieutenant Governor. Coming into force

**208b.**—(1) If so required by the regulations and unless the insurer has complied therewith, an insurer shall not decline to issue or terminate or refuse to renew a contract in respect of such coverages and endorsements as may be set out in the regulations or decline to issue, terminate or refuse to renew any contract or refuse to provide or continue any coverage or endorsement on any ground set out in the regulations. Limitation on termination

(2) The Commissioner may require insurers, agents and brokers to provide such information, material and evidence as the Commissioner considers necessary to determine compliance with subsection (1). Information

Exemption (3) An insurer may apply to the Commissioner for an exemption from subsection (1).

Idem (4) An application for an exemption from compliance with subsection (1) shall be in a form approved by the Commissioner and shall be filed together with such information, materials and evidence as the Commissioner considers necessary.

Idem (5) The Commissioner may exempt an insurer in whole or in part from compliance with subsection (1) if, in the opinion of the Commissioner, compliance with the regulations would impair the solvency of the insurer or would cause the insurer to be in contravention of this Act or the regulations.

Non-application (6) Subsection (1) does not apply in respect of a contract if any payment in respect of premiums payable under the contract or under any ancillary agreement is overdue or if,

(a) the insured has given false particulars of the described automobile to the prejudice of the insurer;

(b) the insured has knowingly misrepresented or failed to disclose in an application for insurance any fact required to be stated therein.

Grounds to terminate, etc., filed **208c.**—(1) Every insurer shall file with the Commission a list of the grounds for which the insurer declines to issue, terminates or refuses to renew a contract or for which the insurer refuses to provide or continue a coverage or endorsement.

Information (2) The Commissioner may require insurers, agents and brokers to provide such information, material and evidence as the Commissioner considers necessary to determine the manner in which any ground is applied by the insurer.

Permitted grounds (3) An insurer shall not decline to issue, terminate or refuse to renew a contract or refuse to provide or continue a coverage or endorsement, except on a ground set out in the list filed with the Commission.

Hearing (4) The Commissioner may order, at any time, a hearing with respect to any ground set out in the list filed with the Commission if the Commissioner is of the opinion that the ground or the manner in which it is applied,

(a) is subjective;

(b) is arbitrary;

- (c) bears little or no relationship to the risk to be borne by the insurer in respect of an insured; or
- (d) is contrary to public policy.

(5) Following a hearing with respect to a ground, the Commissioner, Prohibition

- (a) may prohibit an insurer from declining to issue, terminating or refusing to renew any contract or from refusing to provide or continue any coverage or endorsement on that ground; or
- (b) may prohibit an insurer from applying that ground, in the manner specified by the Commissioner, to decline to issue, terminate or refuse to renew any contract or refuse to provide or continue any coverage or endorsement.

**48.—(1) Subsection 209 (1) of the said Act is repealed and the following substituted therefor:**

(1) Subject to section 209a, every contract evidenced by an owner's policy insures the person named therein and every other person who with the named person's consent drives, or is an occupant of, an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage, Coverage of owner's policy, specific automobile

- (a) arising from the ownership or directly or indirectly from the use or operation of any such automobile; and
- (b) resulting from bodily injury to or the death of any person and damage to property.

(1a) A lack of consent does not invalidate such no-fault benefits as are set out in the *No-Fault Benefits Schedule*. Saving, no-fault benefits

**(2) Paragraph 1 of subsection 209 (3) of the said Act is repealed and the following substituted therefor:**

1. The spouse of the deceased insured.

**49. The said Act is further amended by adding thereto the following section:**

Insurer not  
liable re:  
excluded  
driver

**209a.** If a contract evidenced by a motor vehicle liability policy names an excluded driver, the insurer is not liable to any person under the contract or under this Act or the regulations for any loss or damage that occurs while the excluded driver is driving an automobile insured under the contract, except as provided in the *No-Fault Benefits Schedule*.

**50.** Clause 210 (a) of the said Act is amended by inserting after "arising" in the first line "directly or indirectly".

**51.** Section 214 of the said Act is amended by inserting before "use" in the fourth line "or directly or indirectly from the".

**52.** The said Act is further amended by adding thereto the following section:

Excluded  
driver  
endorsement

**217a.** A named insured may stipulate by endorsement to a contract evidenced by a motor vehicle liability policy that any person named in the endorsement is an excluded driver under the contract.

**53.** Subsection 218 (1) of the said Act is amended by inserting after "that" in the third line "except as provided in the *No-Fault Benefits Schedule*".

**54.** Subsection 220 (1) of the said Act is amended by inserting after "ownership" in the third line "or directly or indirectly out of the".

**55.** The said Act is further amended by adding thereto the following sections:

#### DIRECT COMPENSATION—PROPERTY DAMAGE

Application

**230a.**—(1) This section applies if an automobile or its contents, or both, suffers damage arising directly or indirectly from the use or operation in Ontario of any other automobile and both are insured under contracts evidenced by motor vehicle liability policies issued by insurers licensed to undertake insurance in Ontario.

Damage  
recovery  
from  
insured's  
insurer

(2) If this section applies, an insured is entitled to recover for the damages to the insured's automobile and its contents and for loss of use from the insured's insurer under the coverage described in subsection 209 (1) as though the insured were a third party.

(3) Recovery under subsection (2) shall be based on the degree of fault of the insurer's insured as determined under the fault determination rules. Idem

(4) An insured may bring an action against the insurer if the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault or the insured is not satisfied with a proposed settlement and the matters in issue shall be determined in accordance with the ordinary rules of law. Dispute resolution

(5) If this section applies, Restrictions on other recovery

(a) an insured has no right of action against any person involved in the incident other than the insured's insurer for damages to the insured's automobile or its contents or for loss of use;

(b) an insurer, except as permitted by the regulations, has no right of indemnification from or subrogation against any person for payments made to its insured under this section.

(6) This section does not affect an insured's right to recover in respect of any physical damage coverage in respect of the insured automobile. Other coverages not affected

(7) This section does not apply to damages to those contents of an automobile that are being carried for reward. Non-application

(8) This section does not apply if the damage occurred before the coming into force of this section. Idem

(9) This section does not apply if both automobiles are owned by the same person. Idem

(10) This section does not apply to damage to an automobile owned by the insured or to its contents if the damage is caused by the insured while driving another automobile. Idem

#### NOTICE OF DAMAGE

**230b.**—(1) If an automobile insured under a contract is involved in an incident that is required to be reported to police under the *Highway Traffic Act*, the insured shall give to the insurer written notice, with all available particulars, of the incident. Notice to insurer  
R.S.O. 1980,  
c. 198



Idem (2) Subject to subsection (3), the notice required by subsection (1) shall be given to the insurer within seven days of the incident.

Idem (3) If the insured is unable because of incapacity to comply with subsection (1) within seven days of the incident, the insured shall comply as soon as possible thereafter.

Idem (4) Compliance with this section shall be deemed to be compliance with statutory conditions 3 (1) (a) and 4 (1) (a) set out in section 207.

**56.—(1) Clause 231 (2) (b) of the said Act is amended,**

(a) by striking out “if residing in the same dwelling premises as the insured” in the first and second lines of sub-subclause (B); and

(b) by striking out “if residing in the same dwelling premises as such person” in the fifth, sixth and seventh lines of sub-subclause (C).

**(2) Section 231 of the said Act is amended by adding thereto the following subsection:**

Exclusion  
from  
coverage

(2a) Notwithstanding clause (2) (b), a person who sustains loss or damage while the insured automobile is being used or operated by an excluded driver shall be deemed not to be a person insured under the contract in which the excluded driver is named, except as provided in the *No-Fault Benefits Schedule*.

**(3) The said section 231 is further amended by adding thereto the following subsection:**

Restriction  
on recovery

(5a) No person has a right of action against any other person in respect of damage to an uninsured automobile or its contents arising directly or indirectly from the use or operation of an automobile if at the time of the damage the uninsured automobile was required by any Act to be insured under a contract evidenced by a motor vehicle liability policy.

**(4) Subsection 231 (6) of the said Act is repealed and the following substituted therefor:**

Release

(6) A release under section 239a does not enure to the benefit of any person against whom the insurer may subrogate under subsection (5).

**57. Sections 232, 233 and 234 of the said Act are repealed and the following substituted therefor:**

**231a.**—(1) In respect of loss or damage arising directly or indirectly from the use or operation, after this section comes into force, of an automobile and despite any other Act, none of the owner of an automobile, the occupants of an automobile or any person present at the incident are liable in an action in Ontario for loss or damage from bodily injury arising from such use or operation in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* involving the automobile unless, as a result of such use or operation, the injured person has died or has sustained,

No-fault  
principle  
established

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

(2) Subsection (1) does not relieve any person from liability other than the owner of the automobile, occupants of the automobile and persons present at the incident.

Idem

(3) In an action for loss or damage from bodily injury arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before or at trial, determine if the injured person has, as a result of the accident, died or has sustained,

Judicial  
determination

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

(4) Even though a defence motion under subsection (3) is denied, the defendant may, at trial, in the absence of the jury, and following the hearing of evidence, raise the defence provided in subsection (1).

Idem

(5) In a proceeding involving a plaintiff who cannot recover against the owner of an automobile, the occupant of an automobile or a person present at the incident because of the operation of subsection (1), a defendant is not liable for damages caused by any person who is excluded from liability because of the operation of subsection (1) and is not liable to contribute or indemnify in respect of such damages.

Joint and  
several  
liability,  
joint  
tort-feasors

Idem

(6) For the purposes of subsection (5), the proportion of liability of all persons involved in the incident from which the proceeding arose shall be determined as though all persons wholly or partly responsible for the loss or damage were parties to the proceeding even though any such person is not actually a party.

Definition

R.S.O. 1980,  
c. 198

(7) For the purposes of this section, "owner" includes an operator as defined in subsection 15a (1) of the *Highway Traffic Act*.

Collateral  
source rule  
not to apply

**231b.**—(1) The damages awarded to a person in a proceeding for loss or damage arising directly or indirectly from the use or operation of an automobile shall be reduced by,

- (a) all payments that the person has received or that were or are available for no-fault benefits and by the present value of any no-fault benefits to which he or she is entitled;
- (b) all payments that the person has received under any medical, surgical, dental, hospitalization, rehabilitation or long-term care plan or law and by the present value of such payments to which he or she is entitled;
- (c) all payments that the person has received or that were or are available for loss of income under the laws of any jurisdiction or under an income continuation benefit plan and by the present value of any such payments to which he or she is entitled; and
- (d) all payments that the person has received under a sick leave plan arising by reason of the person's occupation or employment.

Exception

R.S.O. 1980,  
c. 539

(2) Payments or benefits received or that were, are or may become available to a person under the *Workers' Compensation Act* shall not be applied under subsection (1) to reduce the damages awarded.

Idem

(3) A reduction made under subsection (1) does not apply for the purpose of determining a person's entitlement to compensation under subsection 8 (2) of the *Workers' Compensation Act*.

Limitation on  
subrogation

(4) A person who has made a payment or who has a liability to pay a benefit described in clause (1) (a), (b), (c) or (d) is not subrogated to a right of recovery of the insured against another person in respect of that payment or benefit.

(5) The Workers' Compensation Board is not subrogated to a right of recovery of the insured against another person in respect of a payment or benefit paid by the Workers' Compensation Board to the insured or in respect of a liability to make such payment or benefit. Idem

(6) This section applies to damages awarded for loss or damage arising directly or indirectly from the use or operation, after the 23rd day of October, 1989, of an automobile. Application

**232.—**(1) Every contract evidenced by a motor vehicle liability policy shall provide for the no-fault benefits set out in the *No-Fault Benefits Schedule*, subject to the terms, conditions, provisions, exclusions and limits set out in that Schedule. No-fault benefits

(2) The following rules apply for determining who is liable to pay no-fault benefits: Liability to pay

1. In respect of an occupant of an automobile,
  - i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,
  - ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,
  - iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to no-fault benefits arose,
  - iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.
2. In respect of non-occupants,
  - i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,
  - ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,

- iii. if recovery is unavailable under subparagraph i or ii, the non-occupant has recourse against the insurer of any automobile involved in the incident from which the entitlement to no-fault benefits arose,
- iv. if recovery is unavailable under subparagraph i, ii or iii, the non-occupant has recourse against the Motor Vehicle Accident Claims Fund.

Liability

(3) An insurer against whom a person has recourse for the payment of no-fault benefits is liable to pay the benefits.

Choice of insurer

(4) If, under subparagraph i or iii of paragraph 1 or subparagraph i or iii of paragraph 2 of subsection (2), a person has recourse against more than one insurer for the payment of no-fault benefits, the person, in his or her absolute discretion, may decide the insurer from which he or she will claim the benefits.

Idem

(5) Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the spouse or a dependant, as defined in the *No-Fault Benefits Schedule*, of a named insured, the person shall claim no-fault benefits against the insurer under that policy and, if there is more than one such policy, the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits.

Excess insurance

(6) The insurance mentioned in subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

Idem

(7) The insurance mentioned in subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

Payments pending dispute resolution

(8) Where the *No-Fault Benefits Schedule* provides that the insurer will pay a particular no-fault benefit pending resolution of any dispute between the insurer and an insured, the insurer shall pay the benefit until the dispute is resolved.

. . . . .

Particulars of insurance

**234.—**(1) A person who is entitled to no-fault benefits or his or her personal representative is entitled to particulars as to whether the owner or operator of any automobile against

whom the person may have a claim has insurance that provides for no-fault benefits and the name of the insurer, if any.

(2) The person or his or her personal representative may demand the particulars described in subsection (1) by registered mail from the owner or operator of the automobile or the insurer, if any, of either of them. Demand for particulars

(3) Every owner, operator and insurer shall comply with a demand under subsection (2) within ten days of receiving the demand. Reply

**58.** Section 235 of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

**59.** Section 236 of the said Act is repealed.

**60.** Subsection 237 (1) of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

**61.** Section 238 of the said Act is repealed and the following substituted therefor:

**238.**—(1) Every proceeding against any insurer under a contract in respect of insurance provided under section 231 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than two years after the happening of the accident. Limitation of action

(2) Every proceeding against any insurer under a contract in respect of insurance provided under section 232 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than the period described in subsection 242c (5). Idem

**62.** Subsection 239 (2) of the said Act is repealed.

**63.** The said Act is further amended by adding thereto the following sections:

**239a.** Payments made or available to a person under the *No-Fault Benefits Schedule* constitute, to the extent of such payments, a release by the person, the person’s personal representative, the person’s insurer or any one claiming through or under the person or by virtue of Part V of the *Family Law Act, 1986* of any claim under subsection 231 (1) or 232 (1). Release  
1986, c. 4

Indemnifi-  
cation in  
certain cases

**239b.**—(1) The insurer responsible under subsection 232 (2) for the payment of no-fault benefits to such classes of persons as may be named in the regulations is entitled, subject to such terms, conditions, provisions, exclusions and limits as may be prescribed, to indemnification in relation to such benefits paid by it from the insurers of such class or classes of automobiles as may be named in the regulations involved in the incident from which the responsibility to pay the no-fault benefits arose.

Idem

(2) Indemnification under subsection (1) shall be made according to the respective degree of fault of each insurer's insured as determined under the fault determination rules.

Deductible

(3) No indemnity is available under subsection (2) in respect of the first \$2,000 of no-fault benefits paid in respect of a person described in that subsection.

Arbitration

(4) If the insurers are unable to agree with respect to indemnification under this section, the dispute shall be resolved through arbitration under the *Arbitrations Act*.

R.S.O. 1980,  
c. 25

Stay of  
arbitration  
proceedings

(5) No arbitration hearing shall be held with respect to indemnification under this section if there is an unsettled claim against any of the insurers by an insured in respect of the incident for which indemnification is sought.

**64.**—(1) Subsection 241 (1) of the said Act is amended by inserting after “ownership” in the fourth line “or directly or indirectly with the”.

(2) Subsection 241 (2) of the said Act is amended by striking out “232 and 233” in the first line and inserting in lieu thereof “and 232”.

**65.** The said Act is further amended by adding thereto the following sections:

#### DISPUTE RESOLUTION—NO-FAULT BENEFITS

Dispute  
resolution,  
procedure to  
be followed

**242a.**—(1) Disputes in respect of any insured person's entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which an insured person is entitled shall be resolved in accordance with sections 242b to 242e and the *No-Fault Benefits Schedule*.

No opting  
out

(2) Any restriction on a party's right to mediate, litigate, arbitrate, appeal or apply to vary an order as provided in sections 242b to 242f is void except where the restriction forms part of a settlement.

(3) For the purposes of this section and sections 242b to 242f, “insured person” includes a person who is claiming funeral expenses or a death benefit under the *No-Fault Benefits Schedule*. Definition

(4) The Director and every arbitrator shall determine issues before them by order and may make an order subject to such conditions as are set out in the order. Orders

(5) If an insurer or an insured is represented in any mediation, arbitration, appeal or variation proceeding under sections 242b to 242f, the mediator, arbitrator or Director, as the case may be, may adjourn the proceeding, with or without conditions, if the representative is not authorized to bind the party he or she represents. Power to bind parties

**242b.**—(1) Either the insured person or the insurer may refer to a mediator any matter in dispute in respect of the insured person’s entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which the insured person is entitled. Mediation

(2) The party seeking mediation shall file an application for the appointment of a mediator with the Commission. Starting the process

(3) The Director shall ensure that a mediator is appointed promptly. Mediator’s appointment

(4) The mediator shall enquire into the issues in dispute and attempt to effect a settlement of as many of the issues as possible within the time prescribed in the regulations for the settlement of the type of dispute in question. Mediation

(5) The parties may by agreement extend the time for the completion of the mediation process, even if the time for completion has expired. Extension of time

(6) If at any time before a settlement is effected the mediator is of the opinion that mediation will fail, he or she shall forthwith notify the parties. Notice of failure

(7) Mediation has failed when the mediator has given notice to the parties that in his or her opinion mediation will fail, or when the prescribed or agreed time for mediation has expired and no settlement has been reached. Idem

(8) If mediation fails, the mediator, in addition to any notice required to be given, shall prepare and give to the parties a report setting out the insurer’s last offer and the mediator’s description of the issues that remain in dispute. Idem



Litigation or  
arbitration

**242c.**—(1) If mediation fails, the insured person may bring a proceeding in a court of competent jurisdiction or may refer the matter to an arbitrator.

Limitation

(2) No person may bring a proceeding in any court or refer a matter to arbitration unless mediation has first been sought and has failed.

Payment  
pending  
dispute  
resolution

(3) Subject to subsection (4), if mediation fails, the insurer shall pay no-fault benefits in accordance with the last offer of settlement that it had made before the failure until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director.

Idem

(4) If a dispute involves a no-fault benefit that the insurer is required to pay under subsection 232 (8) and the insured has not commenced a proceeding in a court or an arbitration proceeding within forty-five days after the day mediation failed, the insurer shall pay the insured in accordance with the last offer made by the insurer before the failure until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director.

Limitation  
period

(5) A proceeding in a court or an arbitration proceeding in respect of no-fault benefits must be commenced within two years after the insurer's refusal to pay the benefit claimed or within such longer period as may be provided in the *No-Fault Benefits Schedule*.

Arbitration,  
starting the  
process

**242d.**—(1) An insured person seeking arbitration shall file an application for the appointment of an arbitrator with the Commission.

Arbitrator's  
appointment

(2) The Director shall ensure that an arbitrator is appointed promptly.

Settlement of  
issues

(3) The arbitrator shall determine all issues in dispute and such other issues as the parties may agree.

Procedures

(4) The arbitration shall be conducted in accordance with the procedures and within the time-limits set out in the regulations.

Questions

(5) The Director, on the recommendation of an arbitrator, shall refer to the chair of the medical and rehabilitation advisory panel any question related to the medical condition or treatment of the insured person or related to the insured person's rehabilitation.

(6) The chair of the medical and rehabilitation advisory panel shall refer the question to one or more persons (referred to in this section as advisors) who he or she considers qualified to conduct a medical or rehabilitation assessment, as the case may be.

Advisors

(7) Advisors may advise and report to the arbitrator on any question before them on the basis of the evidence before the arbitrator and they may require the insured person to submit, at the expense of the insurer, to such medical or rehabilitation assessments as they may require.

Idem

(8) Reports prepared by advisors shall be delivered to the arbitrator and the parties.

Transmittal of reports

(9) Except with the permission of the insured person, no person shall use or provide copies of, or release information from, any report prepared by an advisor other than for the purpose of determining the claim in respect of which the arbitration was undertaken.

Use of reports

(10) If the arbitrator finds that an insurer has unreasonably withheld or delayed payments, the arbitrator, in addition to awarding the benefits and interest to which an insured person is entitled under the *No-Fault Benefits Schedule*, shall award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*.

Special award

(11) The arbitrator may award to the insured person such expenses incurred in respect of an arbitration proceeding as may be prescribed in the regulations to the maximum set out in the regulations.

Expenses

(12) A party may apply to the Director for the appointment of a new arbitrator if the party believes that the arbitrator is biased and the Director shall determine the issue.

Bias

(13) The arbitrator, forthwith upon making a decision in an arbitration, shall deliver a copy of his or her order together with the reasons therefor to the insured person, the insurer and the Director.

Copies of decision

(14) At the request of the insured person, the Director shall file a copy of the arbitrator's order in the Supreme Court and the order shall be entered and be enforceable in the same way as a judgment or order of the court.

Enforcement

- Idem (15) The method of enforcement set out in subsection (14) is in addition to any other method of enforcement set out in this Act.
- Non-application of R.S.O. 1980, c. 25 (16) The *Arbitrations Act* does not apply to arbitrations under this section.
- Appeal **242e.**—(1) A party to an arbitration may appeal the order of the arbitrator to the Director.
- Notice of appeal (2) A notice of appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the arbitrator's order and the appellant shall serve the notice on the respondent.
- Extension of time (3) The Director may extend the time for requesting an appeal, either before or after the thirty days, if the Director is satisfied that there are apparent grounds for granting relief to the person and that there are reasonable grounds for applying for the extension, and the Director may give such directions as he or she considers proper consequent upon the extension.
- Nature of hearing (4) The Director may determine the appeal on the record or by way of a rehearing of all the issues before the arbitrator or partly on the record and partly by way of rehearing as the Director in his or her opinion may decide.
- Power of the Director (5) Upon hearing an appeal, the Director may confirm, vary or rescind the order appealed from or substitute his or her order for that of the arbitrator.
- Order not stayed (6) An appeal does not stay the order of the arbitrator unless the Director decides otherwise.
- Medical reports, special awards, expenses (7) Subsections 242d (5) to (11) apply with necessary modifications to appeals before the Director.
- Interventions (8) The Director may permit persons who are not parties to the appeal to make submissions on issues of law arising in an appeal.
- Enforcement (9) At the request of the insured person, the Director shall file a copy of his or her order in an appeal under this section in the Supreme Court and the order shall be entered and be enforceable in the same way as a judgment or order of the court.

(10) The method of enforcement set out in subsection (9) is in addition to any other method of enforcement set out in this Act. Idem

**242f.**—(1) Either the insured person or the insurer may apply to the Director to vary or revoke an order made by an arbitrator or the Director. Application for variation

(2) If an application is made to vary or revoke an arbitrator's order, the Director may decide the matter or he or she may appoint the same arbitrator or some other arbitrator to determine it. Idem

(3) If the arbitrator or Director is satisfied that there has been a material change in the circumstances of the insured or that evidence not available on the arbitration or appeal has become available or that there is an error in the order, the arbitrator or Director may vary or revoke the order and may make a new order if he or she considers it advisable to do so. Powers on variation

(4) An order made, varied or revoked under subsection (3) may be prospective or retroactive. Idem

**242g.**—(1) The Director may state a case in writing for the opinion of the Divisional Court upon any question that, in his or her opinion, is a question of law. Stated case

(2) The Divisional Court shall hear and determine the stated case. Idem

**242h.** An arbitrator cannot vary or revoke an order made by him or her and cannot make a new order to replace an order made by him or her if the order is under appeal. When arbitrator cannot act

**242i.** An insurer shall not, after an order of the Director or of an arbitrator, reduce benefits to an insured person on the basis of an alleged change of circumstances, alleged new evidence or an alleged error, unless the insured person agrees or unless the Director or an arbitrator so orders in a variation or appeal proceeding under section 242e or 242f. Protection of benefits

**242j.** The Director shall review arbitration orders and may recommend to the Superintendent that the Superintendent investigate the business practices of an insurer if the Director is of the opinion that any arbitration or appeal from an arbitration reveals unfair or deceptive business practices. Finding of possible unfair or deceptive business practice

## CHANGES TO NO-FAULT BENEFITS SCHEDULE

Reports to  
the Assembly

**242k.** At least once every two years, the Minister shall table a report before the Assembly in respect of the adequacy of no-fault benefits and setting out changes made to the *No-Fault Benefits Schedule* since the last report and changes that are proposed to the *No-Fault Benefits Schedule* at the time of the report.

**66.** Subsection 299 (4) of the said Act is repealed.

**67.** Subsection 303 (4) of the said Act is repealed and the following substituted therefor:

Exception

(4) This section is subject to any rules to the contrary certified by and filed with the Superintendent under this Part.

**68.** Subsection 308 (1) of the said Act is amended by striking out “prescribe” in the last line and inserting in lieu thereof “require”.

**69.—(1)** Subsection 309 (1) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 309 (2) of the said Act is repealed and the following substituted therefor:

Request by  
Commissioner

(2) If, after considering the report, the Commissioner agrees with the Superintendent, the Commissioner shall require the society to make, within the specified time but not exceeding four years, such increase in its rates of contribution or such reduction in the benefits payable under its contracts of insurance or otherwise as will enable the society to provide for the payment of its contracts of insurance at maturity.

(3) Subsection 309 (4) of the said Act is amended by striking out “Minister” in the fourth line and inserting in lieu thereof “Commissioner”.

**70.** Section 310 of the said Act is amended by striking out “Minister” in the seventh line and inserting in lieu thereof “Commissioner”.

**71.** Subsection 311 (1) of the said Act is amended by striking out “Minister” in the second line and in the fourth line and inserting in lieu thereof in each instance “Commissioner”.

**72.** Subsection 322 (1) of the said Act is amended by striking out “Minister” in the tenth line and inserting in lieu thereof “Commissioner”.

**73.** Subsection 325 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

**74.** Sections 369, 370, 371 and 372 of the said Act are repealed and the following substituted therefor:

**369.**—(1) Every insurer shall apply to the Commissioner for approval of, Application re classes, rates

- (a) the classes of risk exposure it intends to use in determining the rates for each coverage and category of automobile insurance; and
- (b) the rates it intends to use for each coverage and category of automobile insurance.

(2) An insurer is not required to apply for approval of such classes of risk exposure as insurers may be required by regulation to use. Exception

(3) An application for approval of classes of risk exposure or rates shall be in a form approved by the Commissioner and shall be filed together with such information, material and evidence as the Commissioner may specify. Material to be furnished

(4) The Commissioner may require an applicant to provide such information, material and evidence as the Commissioner considers necessary in addition to the information, material and evidence required to be provided in or with the application. Additional information

(5) An application shall be deemed to have been approved by the Commissioner sixty days after it is filed unless the Commissioner within that sixty-day period advises the applicant orally or otherwise that he or she has not approved the application. Approval

(6) The Commissioner may approve the application before the expiry of the sixty-day period. Idem

(7) The Commissioner may extend the period for approval for a period not exceeding sixty days. Extension of time

(8) If the Commissioner notifies an applicant orally that he or she has not approved an application, the Commissioner Notice

shall promptly mail a written notice to the applicant confirming that fact.

Hearing

(9) If the Commissioner notifies an applicant that he or she has not approved an application, the Commissioner shall hold a hearing.

Hearing,  
public  
interest

(10) The Commissioner shall not approve an application if the Commissioner considers that it is in the public interest to hold a hearing on the application.

Refusal to  
approve

(11) The Commissioner shall refuse to approve an application if the Commissioner considers that the proposed classes of risk exposure or rates are not just and reasonable in the circumstances.

Idem

(12) The Commissioner shall refuse to approve an application respecting proposed classes of risk exposure that the Commissioner considers,

(a) are not reasonably predictive of risk; or

(b) do not distinguish fairly between classes of risk exposure.

Idem

(13) The Commissioner shall refuse to approve an application respecting proposed rates that the Commissioner considers would impair the solvency of the applicant or are excessive in relation to the financial circumstances of the insurer.

Relevant  
information

(14) In deciding upon an application, the Commissioner may take into account financial and other information and such other matters as may directly or indirectly affect the applicant's proposed rates or the applicant's ability to underwrite insurance for the proposed classes of risk exposure.

Powers of  
the Commis-  
sioner

(15) Following a hearing, the Commissioner may approve or refuse to approve the application or may vary the classes of risk exposure or the rates, and the approval may be subject to such conditions or restrictions as the Commissioner considers appropriate in the circumstances.

Definition

(16) In this section, "insurer" includes the Facility Association.

Exemptions  
from  
approval  
process

**370.**—(1) The Commissioner may exempt insurers, other than the Facility Association, from making an application under section 369 in respect of designated categories or coverages of automobile insurance.

(2) An insurer shall file the classes of risk exposure and rates it intends to use for the exempted categories or coverages of automobile insurance in a form approved by the Commissioner. Filing

(3) An insurer may use the classes of risk exposure or rates filed under this section thirty days after filing them. Effective date

(4) If the Commissioner revokes an exemption, insurers are required to apply within thirty days after the revocation for approval under section 369 of the classes of risk exposure and rates it is using for the categories or coverages of automobile insurance affected by the revocation. Revocation of exemption

(5) An insurer may continue to use the classes of risk exposure and rates filed before the Commissioner revoked the exemption until the insurer's application under subsection (4) is determined. Idem

**371.**—(1) The Commissioner may require that affiliated insurers who write automobile insurance in Ontario file their applications under section 369 or 370 concurrently. Applications by affiliates

(2) The Commissioner may consider the classes of risk exposure and the rates of the affiliates of an insurer when deciding upon the insurer's application. Idem

(3) For the purpose of this section, an insurer is considered to be affiliated with another insurer if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. Interpretation

**372.**—(1) Despite any approval or exemption under section 369 or 370, the Commissioner may, at any time, order a hearing with respect to any classes of risk exposure or rates for any coverage or category of automobile insurance of an insurer if the Commissioner is of the opinion that, Reconsideration

- (a) the classes of risk exposure or rates are not just and reasonable in the circumstances;
- (b) the classes of risk exposure are not reasonably predictive of risk or do not distinguish fairly between classes of risk exposure; or
- (c) the rates would impair the solvency of the insurer or are excessive in relation to the financial circumstances of the insurer.



## Variation

(2) Following a hearing, the Commissioner may vary the classes of risk exposure the insurer may use or the rates it may charge.

## Deemed approval

(3) For the purposes of section 372b, classes and rates varied under subsection (2) shall be deemed to be classes and rates approved by the Commissioner.

## Policy statements

**372a.**—(1) The Minister may issue policy statements on matters related to coverages or categories of automobile insurance, classes of risk exposure and automobile insurance rates.

## When effective

(2) A policy statement takes effect on the day it is published in *The Ontario Gazette*.

## Effect of statement

(3) The Commissioner shall have regard to the policy statements issued under this section in making decisions under this Part.

## Prohibition, classes

**372b.**—(1) No insurer shall use a class of risk exposure in determining a rate for a coverage or category of automobile insurance that is not approved by the Commissioner or authorized under section 370 or by regulation.

## Idem, rates

(2) No insurer shall use a rate for a coverage or category of automobile insurance that is not approved by the Commissioner or authorized under section 370.

## Definition

(3) In this section, “insurer” includes the Facility Association.

## Coming into force

(4) This section comes into force on a day to be named by proclamation of the Lieutenant Governor.

**75.**—(1) Clause 388 (8) (g) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(2) Subsection 388 (8a) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 8, section 8, is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

**76.**—(1) Clause 393 (a) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 70, section 32, is repealed and the following substituted therefor:

- (a) “person” includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society

known as Lloyd's, fraternal society, mutual benefit society or syndicate.

**(2) Clause 393 (b) of the said Act is amended,**

- (a) by striking out “in the business of insurance” in the first and second lines;**
- (b) by striking out “or” at the end of subclause (viii); and**
- (c) by striking out subclause (ix) and inserting in lieu thereof:**
  - (ix) any conduct resulting in unreasonable delay or resistance to the fair adjustment and settlement of claims,**
  - (x) making the issuance or variation of a policy of automobile insurance conditional upon the purchase by the insured of another insurance policy,**
  - (xi) when rating a person or a vehicle as an insurance risk for the purpose of determining the premium payable for a policy of automobile insurance, misclassifying the person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use, or**
  - (xii) any activity or failure to act that is prescribed as an unfair or deceptive act or practice.**

**77. Section 394 of the said Act is repealed and the following substituted therefor:**

**394.** No person shall engage in any unfair or deceptive act or practice. Prohibition

**78. Sections 396 and 397 of the said Act are repealed and the following substituted therefor:**

**396.—**(1) If, in the opinion of the Superintendent, a person is committing any act or pursuing any course of conduct that is an unfair or deceptive act or practice or might reasonably be expected to result in a state of affairs that would constitute an unfair or deceptive act or practice, the Superintendent may give notice to the person of the Superintendent's intention to order the person, Superintendent's orders

- (a) to cease or refrain from doing any act or pursuing any course of conduct identified by the Superintendent;
- (b) to cease engaging in the business of insurance or any aspect of the business of insurance specified by the Superintendent; or
- (c) to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

**Hearing**

(2) A person, by written notice served on the Superintendent within fifteen days after the service of the notice under subsection (1), may require a hearing before the Superintendent.

**Interim order**

(3) Notwithstanding subsection (2), where, in the opinion of the Superintendent, the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Superintendent, without prior notice, may make an interim order as described in clause (1) (a), (b) or (c) which shall take effect immediately on its making, and which shall become permanent on the fifteenth day after its making unless within that time a hearing before the Superintendent is requested.

**When order may be made**

(4) If no hearing is requested within the time set out in subsection (2) or (3), or if a hearing is held and the Superintendent is of the opinion that an order described in clause (1) (a), (b) or (c) should be made, the Superintendent may make a permanent order under any of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

**Hearing**

(5) A request for a hearing under subsection (3) shall be in writing and served on the Superintendent.

**Extension of order**

(6) If a hearing is requested under subsection (3), the Superintendent may extend the temporary order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

**Modification or revocation**

(7) The Superintendent may, after giving the person named in the order an opportunity to be heard, modify or, without holding a hearing, revoke an order made under this section.

**79. The said Act is further amended by adding thereto the following Part:**

## PART XX

## EXAMINATION AND ENFORCEMENT

**407.** In this Part, “examination” means examination, inquiry, appraisal, audit or inspection under this Act. Definition

**408.**—(1) It is a condition of the licensing of a person that the person facilitate examinations. Examinations, general

(2) For the purpose of an examination, the insurer, agent or adjuster shall prepare and submit to the person conducting the examination such statements or returns with respect to the insurer’s, agent’s or adjuster’s business, finances or other affairs, in addition to the statements or returns mentioned in this Act, as the Superintendent may require. Material to be furnished

(3) The officers, agents and employees of an insurer, agent or adjuster shall open the books for inspection and shall otherwise facilitate an examination under this Act so far as it is in their power. Duty of officers, etc.

(4) In order to facilitate an examination of the books and records of an insurer, agent or adjuster, the Superintendent or a person designated by the Commissioner may require the insurer, agent or adjuster to produce the books and records at his, her or its principal place of business in Ontario, or at such other convenient place as the Superintendent may direct. Production of books

(5) On the direction of the Superintendent or a person designated by the Commissioner, if an examination of an insurer is made at an office situate outside Ontario, the insurer shall pay the costs and expenses of the examination. Expense of further examination

**409.**—(1) A person conducting an examination, for the purpose of carrying out that person’s duties, Powers of examination, etc.

- (a) may enter any place at any reasonable time;
- (b) may require the production for inspection of documents or things that may be relevant to the carrying out of the duties;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall return them within a reasonable time to the person who produced them; and

- (d) may question a person on matters that are or may be relevant to the carrying out of the examination.

Entry to  
dwellings

(2) No person may exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant for  
search

(3) Where a justice of the peace is satisfied on information upon oath that there are in a place documents or things that there are reasonable grounds to believe will afford evidence relevant to the carrying out of an examination under this Act, the justice of the peace may issue a warrant authorizing the person named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for  
entry

(4) Where a justice of the peace is satisfied on information upon oath that there are reasonable grounds to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a person may carry out an examination, the justice of the peace may issue a warrant authorizing such entry by the person named in the warrant.

Execution  
and expiry of  
warrant

(5) A warrant issued under subsection (3) or (4),

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(6) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede a person carrying out an examination.

Idem

(7) Subsection (6) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (3).

Admissibility  
of copies

(8) Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

**410.**—(1) An auditor shall promptly report to the insurer and to the Superintendent any breach of this Act of which the auditor is aware or is made aware under subsection (2) and, if the insurer does not act to rectify the breach within thirty days, the auditor shall promptly report the failure to rectify to the Superintendent. Reporting by auditor

(2) Any person undertaking professional services for an insurer who, in providing the professional services, becomes aware of a breach of this Act shall promptly report the breach to the insurer and the auditor of the insurer or, if there is no auditor, to the Superintendent. Reporting by others

(3) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client. Solicitor-client privilege

**411.** A person who in good faith makes an oral or written statement or disclosure to the Commissioner, the Superintendent, an employee of the Commission or any other person acting under the authority of this Act that is relevant to the duties of the person to whom the statement or disclosure is made shall not be liable in any civil action arising out of the making of the statement or disclosure. No liability

**412.**—(1) In this section, "person" includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society known as Lloyd's, fraternal society, mutual benefit society or syndicate. Definition

(2) Every person is guilty of an offence who, Offences

- (a) directly or indirectly furnishes false, misleading or incomplete information to the Commission whether the information is required under this Act or is volunteered;
- (b) fails to comply with any requirement of, or any order or direction made under, this Act;
- (c) fails to comply with any written undertaking given to the Commissioner or the Superintendent;
- (d) contravenes this Act or the regulations; or
- (e) contravenes any term, condition or restriction imposed by a licence.

(3) On conviction for an offence under this Act, the person convicted is liable on a first conviction to a fine of not more Penalty

than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000.

Derivative

(4) Every director, officer and chief agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association who,

- (a) caused, authorized, permitted or participated in the corporation or unincorporated association committing an offence referred to in subsection (2); or
- (b) failed to take reasonable care to prevent the corporation or unincorporated association from committing an offence referred to in subsection (2),

is guilty of an offence and is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of the offence.

Restitution

(5) Where a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

Order for compliance

**413.**—(1) If it appears to the Superintendent that any person has failed to comply with or is not complying with,

- (a) any order, decision, direction or inquiry made under this Act;
- (b) any undertaking given; or
- (c) any term, condition or restriction imposed on its licence, where applicable,

the Superintendent may, in addition to any other rights under this Act, apply to a judge of the High Court for an order directing the person to comply with or restraining the person from violating the order, decision, direction, inquiry, undertaking, term, condition or restriction, and the judge may make such order as the judge considers appropriate.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Limitation period

**414.** No proceeding for an offence under this Act may be commenced more than two years after the earlier of the date

on which the facts upon which the proceedings are based first came to the knowledge of the Commissioner or the Superintendent.

**80. Schedule C to the said Act is repealed.**

**81. The *Automobile Insurance Rates Control Act, 1989*, being chapter 34, is repealed.**

**82.—(1) Subclause 1 (c) (ii) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

- (ii) provides the no-fault benefits set out in the *No-Fault Benefits Schedule* under the *Insurance Act*.

R.S.O. 1980,  
c. 218

**(2) Section 1 of the said Act is amended by adding thereto the following clause:**

- (ca) “Commissioner” means the commissioner of insurance under the *Insurance Act*.

R.S.O. 1980,  
c. 218

**(3) Clause 1 (n) of the said Act is repealed.**

**(4) Section 1 of the said Act is amended by adding thereto the following subsections:**

(2) An electric streetcar that runs on rails principally on a highway shall be deemed to be a motor vehicle for the purposes of this Act.

Streetcars

(3) Notwithstanding that a motor vehicle is insured under a contract of automobile insurance, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that contract unless the excluded driver is a named insured under another contract of automobile insurance.

Exception re:  
excluded  
driver

R.S.O. 1980,  
c. 218

**(5) The said Act is amended by striking out “Superintendent” wherever it occurs and inserting in lieu thereof in each instance “Commissioner”.**

**(6) Section 3 of the said Act is amended by adding thereto the following subsection:**

(1a) Despite subsection (1), an operator of a motor vehicle who is named as an excluded driver under the contract of

Excluded  
driver to  
carry  
insurance  
card



automobile insurance under which the vehicle is insured shall have in the vehicle at all times an insurance card evidencing that the operator is a named insured under another contract of automobile insurance, and the operator shall surrender the insurance card for reasonable inspection upon the demand of a police officer.

**(7) Subsection 3 (2) of the said Act is amended by striking out “subsection (1)” in the first line and inserting in lieu thereof “this section”.**

**(8) Subsection 10 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 18, section 32, is repealed and the following substituted therefor:**

Idem

(4) Rates prepared under subsection (3) do not come into effect until approved under section 369 of the *Insurance Act*.

**83. Section 66 of the *Corporations Tax Act*, being chapter 97 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:**

Exception

R.S.O. 1980,  
c. 218

(1a) Clause (1) (b) does not apply in respect of a contract of automobile insurance within the meaning of the *Insurance Act* unless the automobile insured by the policy is,

- (a) an ambulance or funeral vehicle;
- (b) a bus, limousine or taxi or other vehicle that carries passengers for reward or as part of a transportation service;
- (c) a fire department or police vehicle;
- (d) a driver training vehicle;
- (e) a vehicle rented for a period of less than thirty days;
- (f) a vehicle used primarily to transport things in connection with the insured's business or occupation;  
or
- (g) a vehicle that weighs more than 4,500 kilograms.

**84. Clause 1 (1) (t) of the *Credit Unions and Caisses Populaires Act*, being chapter 102 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

- (t) "Superintendent" means the Superintendent of Deposit Institutions.

**85.** Section 36 of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

(4) Despite subsection (1), the Plan is not subrogated to the rights of an insured person in respect of personal injuries arising directly or indirectly from the use or operation of an automobile after this section comes into force in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* under the *Insurance Act*.

Exception

R.S.O. 1980,  
c. 218

**86.—(1)** Section 1 of the *Motor Vehicle Accident Claims Act*, being chapter 298 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 12, section 1, is further amended by adding thereto the following subsection:

(1a) Notwithstanding that a motor vehicle is insured under a motor vehicle liability policy, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that policy unless the excluded driver is a named insured under another motor vehicle liability policy.

Exception re:  
excluded  
driver

R.S.O. 1980,  
c. 218

(2) The said Act is amended by adding thereto the following section:

**4b.—(1)** Any person who has recourse against the Fund for no-fault benefits under section 232 of the *Insurance Act* may make application, in a form prescribed by the Minister, for payment out of the Fund of the benefits.

No-fault  
benefits

(2) If a person has recourse against the Fund under section 232 of the *Insurance Act*,

Idem

R.S.O. 1980,  
c. 218

- (a) a reference to an insurer in the *No-Fault Benefits Schedule* shall be deemed to be a reference to the Fund and a reference to an insured person shall be deemed to be a reference to the person who has recourse against the Fund; and
- (b) sections 238, 239a and 242a to 242i of the *Insurance Act* apply with necessary modifications.

(3) The Minister shall make payment out of the Fund of the amounts owing to a person described in subsection (2).

Idem

Idem

(4) Subsection 21 (9) does not apply to payments under this section.

**87.** Section 10 of the *Motorized Snow Vehicles Act*, being chapter 301 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Application  
of  
R.S.O. 1980,  
cc. 198, 298

**10.** The *Highway Traffic Act*, except Part XI, and the *Motor Vehicle Accident Claims Act*, except section 4b, do not apply to a motorized snow vehicle or to the driving thereof.

**88.** The *Ontario Automobile Insurance Board Act, 1988*, being chapter 18, is repealed.

**89.—(1)** Section 1 of the *Prepaid Hospital and Medical Services Act*, being chapter 388 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

R.S.O. 1980,  
c. 218

(aa) “Commissioner” means the commissioner of insurance under the *Insurance Act*.

(2) Section 12 of the said Act is repealed and the following substituted therefor:

Appeal

**12.** An association that considers itself aggrieved by a decision of the Superintendent may appeal the decision to the Commissioner in accordance with the procedures set out in the *Insurance Act*.

R.S.O. 1980,  
c. 218

**90.—(1)** Section 1 of the *Registered Insurance Brokers Act*, being chapter 444 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

R.S.O. 1980,  
c. 218

(ca) “Commissioner” means the commissioner of insurance under the *Insurance Act*.

(2) Section 9 of the said Act is repealed and the following substituted therefor:

Ontario  
Insurance  
Commission  
R.S.O. 1980,  
c. 218

**9.—(1)** The Ontario Insurance Commission established under the *Insurance Act* shall be deemed to have an interest in the Corporation, as the representative of all persons who may be served by registered insurance brokers.

Information

(2) The Corporation shall, within a reasonable time, furnish the Commissioner or the Superintendent, as the case may be, with such information and financial statements with respect to the Corporation as he or she may require.

(3) Subsection 10 (1) of the said Act is amended,

- (a) by striking out “the Minister and the Superintendent” in the second and third lines and inserting in lieu thereof “and the Minister”; and
- (b) by striking out “or Superintendent” in the last line of clause (g).

**91.—**(1) The filings made by an insurer with the Ontario Automobile Insurance Board under Ontario Regulations 697/89, 110/90 and 111/90 shall together be deemed to constitute the insurer’s first application under section 369 of the *Insurance Act*, as re-enacted by this Act.

Transitional

R.S.O. 1980,  
c. 218

(2) An application referred to in subsection (1) shall be deemed to have been made on the date that section 74 comes into force.

Idem

**92.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**93.** The short title of this Act is the *Insurance Statute Law Amendment Act, 1990*.

Short title

